

# WORLD TRADE ORGANIZATION

RESTRICTED

**G/RO/M/21**  
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## Committee on Rules of Origin

### MINUTES OF THE MEETING OF 22 AND 26 FEBRUARY 1999

Chairman: Mr. R. Wells (Australia)

The agenda proposed for the meeting, contained in WTO/AIR/1004, was adopted by the Committee on Rules of Origin (CRO) as follows:

1. **Report of the Technical Committee on Rules of Origin on progress made at its Fifteenth Session to the Committee on Rules of Origin.....1**
  2. **Implications of the implementation of the harmonized rules of origin on other WTO Agreements (G/RO/W/28/Rev.1, G/RO/W/30-34 & 38) .....4**
  3. **Progress Report to the Council for Trade in Goods on the status of the Harmonization Work Programme .....4**
  4. **Trade facilitation (paragraphs 6.6 to 6.9 of G/C/M/34, G/RO/W/26, G/RO/W/26/Add.1) .....5**
  5. **Notifications under Article 5 and Paragraph 4 of Annex II of the Agreement on Rules of Origin (G/RO/N/24) .....6**
  6. **Election of Officers .....6**
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1. **Report of the Technical Committee on Rules of Origin on progress made at its Fifteenth Session to the Committee on Rules of Origin**

1.1 The Chairman noted that in conformity with paragraph 4 of the Report of the Committee of Rules of Origin to the Council for Trade in Goods on the Harmonization Work Programme (G/RO/25), the Chairman of the Technical Committee on Rules of Origin (TCRO) had submitted to the CRO a Report on progress made at the 15<sup>th</sup> Session of the TCRO. The Report had been circulated to Members as document G/RO/32.

1.2 The Chairman also noted that the Secretariat had circulated document G/RO/30 concerning a template on the unresolved issue of the overall architecture of the harmonized rules of origin which had been transmitted by the TCRO to the CRO for decision. The letter of transmission from the Chairman of the TCRO concerning the unresolved issue had also been circulated as document G/RO/31.

1.3 The representative of Thailand stated that the three options in the template were each based on a different understanding as to what information was required for the application of each option. Option A observed that options B and C “required information from foreign producers which may be difficult or time-consuming to obtain” (paragraph 8 of document G/RO/30). Option B observed the opposite (paragraph 16 of document G/RO/30). On the other hand, each of these options observed that it only required information which was already available in the normal course of business (paragraphs 6 and 18 of document G/RO/30). These factual aspects should be clarified either by the CRO or the TCRO.

1.4 The representative of India stated that in accordance with Article 3(b) of the Agreement, origin should be ascribed to the country where the last substantial transformation had taken place. Therefore if country B (as referred to in document G/RO/30) did not meet the criteria of substantial transformation, it automatically requires moving backwards to apply the rule of substantial transformation. He also stated that Article 9 of the Agreement provided for a hierarchy of rules which established a preference for the use of change in tariff classification as the criterion for determining whether a substantial transformation had occurred. Other requirements, including *ad valorem* percentages or manufacturing operations, could be used only in a supplementary or exclusive manner. Since all primary rules developed to date were, according to his knowledge, based on the use of change in tariff classification, HS-based primary rules should be tested in country A, before applying residual rules which were elaborated on the basis of other requirements. In the example provided in document G/RO/30 of the hat and the diamonds, although the diamonds might add considerable value to the hat, the primary rule for a hat clearly indicated that putting a diamond on the hat did not substantially transform it. If the primary rule was not acceptable in this situation, a split heading for a fancy hat studded with diamonds should have been created. He further stated that under option B, if a hat originating in country B was studded in country C with diamonds originating in country A, origin was conferred to country A, although country A had not made the hat nor studded it with diamonds. In order to avoid this uncomfortable situation, India made proposals under which residual rules were not needed (except for a few items such as a multi-country mixture): for agricultural products, origin was to be conferred to the country in which the products were grown and obtained; for textile products, origin should be conferred to the country in which the processes of bleaching, dyeing, printing, coating, making-up, assembling, etc. took place; and for the machinery sector, origin was to be conferred to the country in which a new product with a new characteristic or a new function was obtained, even within the same tariff classification. As concerns the issue of what information was required for option B, he stated that since import documents which were filed in country C (as referred to in document G/RO/30) would show only the total value of the product, the customs authorities in country C would need to check and verify the value of the hat exported to country B from country A. He further pointed out that this unresolved issue had been transmitted to the CRO by the TCRO after having exhausted the technical debate. The Chairman of the TCRO, in his letter of transmission of the unresolved issue, said that “early resolution of this issue is essential for real progress in meeting the programme set out by the CRO for 1999”. Therefore the CRO should resolve this issue as soon as possible.

1.5 The representative of the United States shared the views of India, and stated that option A was in fact the working assumption of the Harmonization Work Programme (HWP) over the last three years. If there was concern about a fancy hat studded with diamonds, a split heading should be created, rather than developing a general residual rule where origin might be determined on the basis of a transformation which was less than substantial.

1.6 The representative of Switzerland stated that there were three points to be considered by the CRO. First, although options A, B and C differed as to when the application of residual rules were to be triggered, in many cases these options would generate the same origin outcomes. Second, the coverage of option A was limited to the extent that, unlike options B and C, it did not address the issues of mixtures, assembly and change of tariff classification rules which excluded change from

certain headings. Third, option A required information between various buyers and sellers of upstream countries who had been involved in a number of stages of production of the goods. This information might not be available. If origin was determined, as indicated in paragraph 6 of document G/RO/30, on the basis of information available in several customs import declarations which had been filed at each of the previous trading operations, it was necessary to know whether the origin indications appearing on the customs import declarations were determined by a primary rule or by a residual rule. Information obtainable from the customs import declaration might not be enough to satisfy the requirements of option A where origin was conferred to the last country in which a primary rule was satisfied.

1.7 The representative of the European Communities stated that there was no added value aspect in option B which required only a simple calculation of percentage of value, volume or weight on the basis of information already available in the normal course of business. This simple calculation should not, in his view, be considered as a value content test. He also stated that the working assumption of the HWP over the last three years was that the good under consideration was an exported good rather than a good in a previous stage in upstream countries. Origin determination of the exported goods should be based on the test of whether the processing that took place in the exporting country met the primary rule applicable to that good. If the primary rule could not be satisfied in the exporting country, a residual rule would be applied. Investigating the production history of the good seemed very difficult, given the lack of availability of information in the normal course of business. He further pointed out that the HS nomenclature was not developed for origin purposes. It would be unrealistic to identify all products classifiable in a certain tariff heading and create many new split headings as well as origin criteria for each new split heading.

1.8 The representative of Canada stated that at this stage it might be worthwhile discussing what kind of information was required for the application of each option (country of origin of the input materials, tariff classification, values, etc.). What was the source of this information? Would the producer of the final good normally have the information? What would the customs authorities do if they had reason to question the validity of the information? What types of information would the customs authorities require for the purposes of providing advance rulings? Clarification of these factual aspects was important before starting a discussion on the more fundamental question of the respective roles of the primary and residual rules as well as on questions about certainty, predictability and uniformity of each option in terms of its origin outcome. He disagreed with the EC's statement that option B did not include a value-added test. The EC, he assumed, did not consider the simple calculation of the value of materials used for the production of a good as a value-added test which might normally involve complicated cost calculation. However, he believed that even the simple calculation of the value of materials should be considered as a value-added test which was normally associated with all difficult procedural problems. Option A would generate more coherent and consistent origin outcomes. The primary rule applicable to a hat said that when a hat was produced in country A, a substantial transformation took place in that country. Although the hat was exported afterwards to country B and underwent additional processing, the additional processing should not be considered as substantial transformation. Option A coherently and consistently led to the same origin outcome as the primary rule had intended. However, according to option B, the additional processing occurring in country B might be considered as origin-conferring; this meant more than one substantial transformation test. If there was more than one substantial transformation, the rule would not be coherent or consistent.

1.9 The representative of Hong Kong, China pointed out that the unresolved issue transmitted to the CRO did not request the CRO to take a decision on the residual rules themselves. However, in order to understand the implications of options A, B and C, it seemed necessary to clarify further points raised by delegations. Hong Kong, China raised several additional questions.

1.10 The positions of Members on this issue are presented in document G/RO/30; in addition Mexico supported option A and Morocco supported option B.

1.11 The representative of India expressed concern that the necessary will to resolve the issue, and indeed to take forward the work programme on harmonization, was perhaps not there. She recalled that the CRO had already missed one definitive deadline to conclude the harmonization work set out in the provisions themselves, and that the CRO was now working on the basis of a best-endeavours deadline. She stated that the pace of the work of the CRO on the unresolved issue transmitted by the TCRO under consideration as well as other elements of the harmonization work had serious implications for the CRO meeting the deadline given to itself last year, and further that the inadequacy of the CRO in respect of this work programme had serious lessons for other committees and bodies of the WTO that were also engaged in various work programmes. She added that in the light of the substantial work that continued to remain in areas like the harmonization of the rules of origin which were a part of the existing commitments, perhaps the WTO collectively was not just in a position to take up new negotiations. She, therefore, urged the Members of the CRO to find the necessary will to resolve this unresolved issue and to hasten the pace of the harmonization work programme so that the negative trade impact that India and other countries face from its lack of completion was minimized and further marginalization of developing countries in global trade was prevented.

1.12 In light of the discussion it was considered necessary to clarify further points raised by delegations concerning certain administrative aspects of the application of the three options in the template as well as points raised concerning matters of substance. The CRO agreed to submit these questions to the proponents of options A, B and C for further clarification. At the same time, the CRO considered it useful to transmit these questions also to the TCRO which may wish to consider whether it may be able to contribute to clarifying the questions. The questions have been circulated as document G/RO/W/41.

1.13 The Committee took note of the statements made and agreed to revert to this issue at its next meeting.

## **2. Implications of the implementation of the harmonized rules of origin on other WTO Agreements (G/RO/W/28/Rev.1, G/RO/W/30-34 & 38)**

2.1 The Chairman recalled that there were five submissions on the table: from India (G/RO/W/28/Rev.1, G/RO/W/30); from the United States (G/RO/W/32); from the Dominican Republic and Honduras (G/RO/W/33); from El Salvador (G/RO/W/34); and from Korea (G/RO/W/38). The Secretariat had also circulated a working document which compiled provisions relating to rules of origin in various WTO Agreements (G/RO/W/31).

2.2 The Committee agreed to revert to this issue at its next meeting.

## **3. Progress Report to the Council for Trade in Goods on the status of the Harmonization Work Programme**

3.1 The Chairman recalled that the CRO, at its meeting on 6 July 1998, had agreed to review the status of the Harmonization Work Programme in February 1999 and to make a progress report to the Council for Trade in Goods (CTG) (G/RO/25, paragraph 4).

3.2 The CRO adopted its Progress Report to the CTG (G/RO/33).

**4. Trade facilitation (paragraphs 6.6 to 6.9 of G/C/M/34, G/RO/W/26, G/RO/W/26/Add.1)**

4.1 The Chairman noted that, as agreed at the meeting of the CTG on 8 July 1998, the CRO was invited to address those aspects of trade facilitation which it regarded as being related to the Agreement on Rules of Origin.

4.2 The CRO completed its discussion on this issue, and authorized the Chairman to send to the Chairman of the CTG the following summary of discussions on Trade Facilitation:

"The Committee on Rules of Origin (CRO), at its meetings on 15 October 1998 and 22 February 1999, discussed those aspects of trade facilitation which it regarded as being related to the Agreement on Rules of Origin (the Agreement).

4.3 It should be noted that the preamble of the Agreement recognizes that "clear and predictable rules of origin and their application facilitate the flow of international trade", and that the clarity and predictability of rules of origin, in turn, is to be ensured when the Agreement itself is fully implemented by all Members. The following aspects of the Agreement are particularly relevant for trade facilitation: (i) implementation of Article 2 and paragraph 3 of Annex II of the Agreement; and (ii) harmonization of non-preferential rules of origin. Some delegations observed that the concept of trade facilitation may extend beyond the present provisions of the Agreement, for example, to administrative aspects of the application of the harmonized rules of origin.

**Implementation of Article 2 and paragraph 3 of Annex II of the Agreement**

4.4 Article 2 of the Agreement establishes disciplines which Members should fulfill during the transition period. Similar disciplines include several procedural provisions which lead to simplification of trade procedures if they are fully implemented: (i) prompt publication of rules (Article 2(g) and paragraph 3(c) of Annex II); (ii) advance binding assessment of origin (Article 2(h) and paragraph 3(d) of Annex II); (iii) non-retroactivity of the rule application (Article 2(i) and paragraph 3(e) of Annex II); (iv) availability of judicial review of administrative action (Article 2(j) of paragraph 3(f) of Annex II); and (v) confidentiality of information (Article 2(k) and paragraph 3(g) of Annex II).

4.5 In this context, attention is drawn in particular to the advance binding assessment of origin. The CRO, at its meeting on 3 October 1997, mandated the Secretariat to conduct a survey of Members' practices with reference to Article 2(h) as well as paragraph 3(d) of Annex II of the Agreement. The Secretariat has circulated information provided by 33 Members in documents G/RO/W/26 and G/RO/W/26/Add.1. On the basis of these submissions, it appears that 13 of these 33 Members implement Article 2(h) and paragraph 3(d) of Annex II of the Agreement. It should also be noted that 37 Members have notified the Secretariat that they do not have non-preferential rules of origin (see documents G/RO/N/1-24).

4.6 It should further be noted that some Members have stated that, although they have not established an explicit procedure, they, by way of administrative means, are fulfilling the obligations as provided for under Article 2(h) of the Agreement.

4.7 Finally, as concerns the implementation of paragraph 3(d) of Annex II of the Agreement, some Members, in their responses to the Secretariat's enquiry, pointed out that preferential trade regimes are managed by specific certificate-of-origin schemes applicable to those preferential transactions.

## Harmonization of non-preferential rules of origin

4.8 One of the objectives of the Agreement is to harmonize and clarify non-preferential rules of origin; i.e. to establish an international common system of non-preferential rules of origin which will provide more certainty in the conduct of world trade. Pursuant to Article 3(a) of the Agreement, upon completion of the HWP, Members should apply the harmonized rules of origin as defined in Article 1.1 equally for all purposes as set out in Article 1.2 of the Agreement. The harmonized rules of origin should also be "objective, understandable and predictable", and "should be administrable in a consistent, uniform, impartial and reasonable manner" (see Article 9.1(c) and (e) of the Agreement).

4.9 Due to the complexity of the issues, the HWP, which was launched in July 1995, was not completed within three years of its initiation as foreseen in the Agreement. In July 1998, Members agreed to extend the deadline, and to commit themselves to make their best endeavours to complete the HWP by November 1999 (see G/RO/25)".

## **5. Notifications under Article 5 and Paragraph 4 of Annex II of the Agreement on Rules of Origin (G/RO/N/24)**

5.1 The Chairman recalled that since the last meeting, the Secretariat had circulated one document informing delegations of the notifications received (G/RO/N/24). To date, 69 Members had made notifications of non-preferential rules of origin and 72 Members had made notifications of preferential rules of origin. He expressed concern that a number of Members had not complied with the notifications requirements, and urged Members who had not yet notified, to do so as early as possible.

5.2 The Committee took note of the notifications and the statement of the Chairman.

## **6. Election of Officers**

6.1 The Chairman noted that the election of the new Chairperson of the Committee should take place at the end of the first meeting of the Committee of the new year pursuant to Rule 12 of the Rules of Procedure of the Committee. The Chairman of the CTG had carried out informal consultations on a slate of names for appointment as chairpersons of subsidiary bodies in accordance with the established Guidelines for Appointment of Officers. However, to date, the consultations had not been completed. Given this situation, the Chairman suggested that the Committee agree to postpone the election of a Chairperson and Vice-Chairperson of this Committee and take up this matter as the first agenda item at the next meeting.

6.2 It was so agreed.

## **7. Other business**

7.1 The Chairman proposed that the next meeting of the CRO take place on Friday, 23 April 1999, preceded by informal meetings on 21 and 22 April 1999.

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